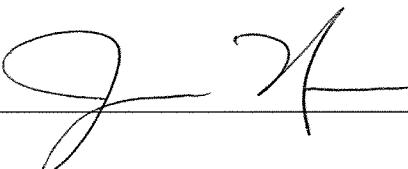


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 4208-4007
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____		Application Number 09/824,781  First Named Inventor Marko Vanska et al.
Signature _____  _____ Type or printed name		Art Unit 2143  Confirmation No. 4818  Examiner Joseph E. Avellino
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the		
<input type="checkbox"/>	applicant/inventor.	
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	
<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>42,680</u>	
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	
 <b>Signature</b> <u>James Hwa</u> <b>Type or printed name</b> <u>(202) 857-7887</u> <b>Telephone number</b> <u>1/5/07</u> <b>Date</b>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		

\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## PRIVACY ACT STATEMENT

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Marko VANSKA, et al.

Group Art Unit: 2143

Serial No.: 09/824,781

Examiner: Joseph E. AVELLINO

Filed: April 4, 2001

For: OPERATING USER PROFILES WITH DISTRIBUTED PROFILE MODEL USING  
A HYBRID TERMINAL

**PRE-APPEAL BRIEF**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Final Official Action dated July 6, 2006 and the Advisory Action, the Applicants respectfully request a Pre-Appeal Conference and submit the following remarks for consideration. This Pre-Appeal Brief is being filed along with a Notice of Appeal, the transmittal Requesting a Pre-Appeal Conference and a Petition and Fee for a three-month extension of time.

**REMARKS**

Claims 1-39 are currently pending. Claims 1-18, 21-25, 31-32 and 34-39 remain rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Doi et al. (US 2001/0014911) in view of Lunsford et al. (US 6,982,962). Claim 33 remains rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Doi in view of Lunsford and further in view of Carothers et al. (US 2002/0069117). Claim 29 remains rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Doi in view of Lunsford and further in view of

Owen et al. (US 6,611,501). The Applicants respectfully disagree with these rejections, as follows.

Claim 1 is directed to a method involving (1) recognizing one or more service opportunities of a service operator on a user device operated by a user; (2) determining a privacy level at which communications is conducted with the service operator relating to the one or more service opportunities of the service operator; and (3) conducting the communications with the service operator at the privacy level. The recognizing occurs before the determining and the conducting. That is, in claim 1, the claimed recognizing, determining and conducting are performed with respect to the same service operator or in the context of a service opportunity of the same service operator.

In the Advisory Action, the Examiner now states:

As to point (1) taken in the context of Lunsford modified by Doi, Lunsford would receive the services provided by the service provider (via the services discovery protocol layer 260) via an inquiry page wherein the page is done anonymously (¶29), once the appropriateness of the service provider is ascertained, as well as the security level supplied by the provider in conjunction with the preferences of the user, the dynamic profile provisioning system of Doi would filter the profile based on the type of transaction (Doi: Figure 12; ¶69) thereby conducting communications at the ascertained privacy level. By this rationale, the combination of Lunsford in view of Doi clearly meet the claimed invention, and therefore the rejection is maintained.

The Applicants respectfully disagree with the Examiner's assertions. The Examiner continues to address claim 1 in an arbitrary piecemeal fashion without taking into proper context the teachings of the cited references in view of the claims as a whole.

Doi as relied upon by the Examiner describes a system in which a user through a mobile terminal is able to obtain services, such as a user non-identification or identification service, from a service provider across a network connection via the Internet. See Doi, Fig. 11. In operation, the mobile terminal sends a service request to the already known service provider (and its services) across the wireless network 18, gateway 19 and Internet 20. Thus, the mobile

terminal 10 does not perform any recognizing of one or more service opportunities of the location dependent service provider or such recognizing occurring before the determining and conducting operations. Lunsford does not remedy these deficiencies in the teaching of Doi.

First, as best understood, the Examiner still appears to rely on the user non-identification or identification services and the service providing servers (accessible across the Internet) in Doi as reading on the claimed service opportunity and service operator, respectively, with reference to the determining and conducting operations as claimed. Since Lunsford as relied upon the Examiner relates to the ability to detect and select network access providers (e.g., inquiry page), it is unclear how this capability pertaining to network access in Lunsford would provide the teaching, suggestion or motivation for modifying the system of Doi to allow a mobile terminal to recognize the services, e.g., non-user identification or identification service, of the service providing servers before the claimed determining and conducting operations. Lunsford simply deals with establishing network connection and does not deal with services available across the connection (e.g., Internet) such as in Doi or the recognition of any such services. That is, the nature of the services in Doi and Lunsford are different. The Examiner completely ignores this difference between Lunsford and Doi and, as such, is arbitrarily picking and choosing from the cited references without evaluating the references as a whole or in their proper context. Further, claim 1 as a whole makes clear that the communications (**as they relate to recognized service opportunities**) with the service operator is conducted at the privacy level and thus the service opportunities do not pertain to “network access” as taught in Lunsford.

Second, as noted above, the mobile terminal in Doi is already aware of the service provider (and its services) since it sends a service request to the service provider across the wireless network 18, gateway 19 and Internet 20. Thus, it is still unclear why one of ordinary skill in the art would modify the Doi system to implement any recognizing operation, as claimed.

The Examiner simply ignores this point and provides nothing in the way of any motivational basis or rationale, or objective support for the alleged modification or combination.

Third, even assuming for argument sake that the teaching of Doi and Lunsford may be combined, the resulting combination would not disclose or suggest the claimed combination of claim 1. Instead, if combined, the resulting system or method at best would simply allow the mobile terminal of Doi to be able to select a network access or network access provider (as taught in Lunsford) to access the Internet and thereafter through the selected network access send a service request to the already known service provider (and its services) as in Doi across the Internet. It is clear that the resulting combination still would not disclose or suggest the claimed recognizing operation or the operations of the recognizing, determining and conducting being performed with respect to the same service operator or service opportunit(ies). This aspect continues to be ignored by the Examiner.

Finally, the Examiner appears to be relying on the same on-again, off-again position that communications access and communications access provider (e.g., access point or “network access provider” for example in Lunsford or even Doi) allegedly read on the “service opportunities” and “service operator” with respect to the claimed recognizing operation. See Amendment (12/23/05). The addition of Lunsford, however, still does not remedy the deficiencies in this repeatedly asserted and withdrawn argument by the Examiner which were employed in the prior 102 rejections in view of Doi. Specifically, the network access provider of Lunsford, as with the operator of the wireless gateway/access point in Doi, are communication network providers that are different than the service providing servers (the service provider) in Doi. That is, the service of network access and the service offered by the service providing servers in Doi are different services from different service providers. Interpreting the network access provider and the service providing server to be the same service operator would also be

contrary to the privacy arrangement as claimed as well as in Doi since the operator of the "access point" or network access actually receives the User ID.

Thus, in view of at least the foregoing, claim 1 and their dependent claims are clearly distinguishable over the cited references, individually or in combination. For similar reasons, claims 34 and 37-39 and their dependent claims are also distinguishable over the cited references, individually or in combination.

Furthermore, the Examiner has not adequately addressed the Applicants' arguments set forth in the prior reply on September 28, 2006 (which is incorporated herein by reference) with respect to claims 4-9, 21, 23, 27, 28 and 34. Further, with respect to at least claims 4-9, the Examiner now appears to rely upon Lunsford in the Advisory Action (as best understood) and no longer on Doi as in the numerous prior office actions, thereby reflecting a new basis of rejection requiring at the least withdrawal of the Finality of the rejection and a new Office Action. Consideration of these and the previously submitted arguments are respectfully requested. Accordingly, these claims are further distinguishable over the cited references.

The Commissioner is hereby authorized to charge any additional fees, including extension fees, which may be required for consideration of this paper or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4208-4007.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: January 5, 2007

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